

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ALLSTATE INSURANCE COMPANY,)	Civil No. 04-3047-CO
)	
Plaintiff,)	ORDER
)	
v.)	
)	
NICHOLAS DANIKEN and JOHN)	
HORTON,)	
)	
Defendants.)	
_____)	

PANNER, Judge.

Plaintiff Allstate Insurance Company brings this action seeking a declaratory judgment against defendants Nicholas Daniken and John Horton.

Horton was the plaintiff, and Daniken was the defendant, in John Horton v. Nicholas Daniken, Case No. 03-3956-L3 (Jackson County, Oregon) (the "Horton action").

At the time of the events at issue in the Horton action, Daniken was insured under Allstate Deluxe Homeowners Insurance Policy # 0 87 463465 11/20. Daniken demanded that Allstate defend him against Horton's claims, and also indemnify Daniken for any judgment awarded.

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Judge Aiken, of this court, held that Allstate had a duty to defend Daniken in the Horton action, but no duty to indemnify Daniken. Allstate then requested a default judgment against Horton, who has not appeared in the present action.

On May 18, 2006, Magistrate Judge John Cooney entered an order of default against Horton. Judge Cooney also filed his Findings and Recommendation, which recommended:

that plaintiff's motion for entry of default judgment against defendant John Horton (#54) be granted, and that judgment be entered in this case in favor of plaintiff with respect to plaintiff's second claim for relief, and in favor of defendants Daniken and Horton with respect to plaintiff's first claim for relief, and in favor of Daniken with respect to his counterclaim for declaratory judgment, and that this case be dismissed.

The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Although no objections have been timely filed, this court still must review the legal principles *de novo*. See Lorin Corp. v Goto & Co., Ltd., 700 F.2d 1202, 1206 (9th Cir. 1983) (absence of objection does not relieve "district court of its obligation . . . to decide for itself whether the Magistrate's report is correct").

I find no error.

Conclusion

Magistrate Judge Cooney's Findings and Recommendation (docket # 57) are adopted.

Allstate's motion (# 54) for entry of a default judgment against defendant Horton is granted. A final judgment will be entered as to all parties, requiring Allstate to defend, but not

to indemnify, Daniken in the Horton action.

IT IS SO ORDERED.

DATED this 13 day of July, 2006.

A handwritten signature in cursive script, reading "Owen M. Panner", written over a horizontal line.

Owen M. Panner
United States District Judge